Tax," 32 HARV. L. REV. 587, 601. Hence it would seem to be subject to taxation under the Arizona statutes. Though the reasoning in the principal case seems erroneous, it should be noticed that the question of fact as to the value of the good-will could have been more accurately determined by the equalization board by taking as a basis of computation the average profits over a series of years, rather than the net profits of a single year.

TORTS — DAMAGES — NERVOUS SHOCK FROM FRIGHT CAUSED BY SPOKEN WORDS. — The defendant, a private detective, in order to induce the plaintiff to show him some letters, said to her: "I am from Scotland Yard. You are the woman we are after. You have been corresponding with a German spy." Because of the fright induced by these words, the plaintiff became seriously ill. The jury found that these threats and false statements were made for the purpose of frightening the plaintiff. *Held*, that the plaintiff could recover. *Janvier* v. *Sweeney and Barker*, [1919] 2 K. B. 316.

Upon the question of a recovery for nervous illness induced by fright without physical impact the authorities are still at variance. See 28 HARV. L. REV. 359–363; 15 HARV. L. REV. 304. For a variety of reasons, most jurisdictions deny a recovery where the action is based upon negligence. *Nelson* v. *Crawford*, 122 Mich. 466, 81 N. W. 335; *Spade* v. *Lynn R. Co.*, 168 Mass. 285, 47 N. E. 88; *Mitchell* v. *Rochester Ry.*, 151 N. Y. 107, 45 N. E. 354. *Contra*, *Dulieu* v. *White*, [1901] 2 K. B. 669. The same is true where the negligence consists of spoken words. *Braun* v. *Craven*, 175 Ill. 401, 51 N. E. 657. But even the courts that allow no recovery in negligence cases say that there would clearly be a recovery where the act was a wilful wrong. *Jeppsen* v. *Jensen*, 47 Utah, 536, 541, 155 Pac. 429, 431; *Davidson* v. *Lee*, 139 S. W. 904, 907 (Tex. Civ. App.); *Spade* v. *Lynn R. Co.*, *supra*, 290, 89. There is decisive authority that where the words or the act alone constitute an admitted tort, the defendant is liable for any nervous illness resulting proximately. *Lonergan* v. *Small*, 81 Kan. 48, 105 Pac. 27 (assault); *Engle* v. *Simmons*, 148 Ala. 92, 41 So. 1023 (trespass); *Garrison* v. *Sun Pub. Ass'n*, 207 N. Y. 1, 100 N. E. 430 (slander). Threats of bodily harm sent by letter and causing illness by reason of apprehension of violence have also been held to be ground for an action. *Houston* v. *Woolley*, 37 Mo. App. 15; *Grimes* v. *Gates*, 47 Vt. 594. But, in spite of numerous dicta, there are very few square decisions in favor of recovery for the consequences of fright induced by spoken words, where the words do not otherwise constitute an admitted tort. The principal case is therefore to be regarded as an important one in reaffirming the right of recovery established in an earlier English case. *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57.

TRUSTS — POSTPONEMENT OF ENJOYMENT OF THE INTEREST OF A SOLE *CESTUI QUE TRUST* — MERGER OF LEGAL AND EQUITABLE ESTATES. — The testator devised certain realty to his wife in trust for herself for ten years and then to herself absolutely. He expressed a desire that the estate should remain intact during the trust period, but placed no restrictions on alienation and gave his wife the power in her will to designate a successor in the trusteeship. Accordingly she empowered her grandson to convey the land in fee. The latter, after the death of the testator's widow but before the expiration of the ten years, contracted to convey the land. *Held*, that he could pass good title. *Odom* v. *Morgan*, 99 S. E. (N. C.) 195.

Generally, if both the legal and equitable title to real estate held in trust become vested in the same person, there will be a merger resulting in absolute ownership and the consequent termination of the trust. *Swisher* v. *Swisher*, 157 Iowa, 55, 137 N. W. 1076. See *Woodward* v. *James*, 115 N. Y. 346, 357, 22 N. E. 150, 152. See 1 PERRY ON TRUSTS, 6 ed., 347. But this rule does not operate mechanically; where termination of the trust might injure the interests

of others there will be no merger. *Sherlock* v. *Thompson*, 167 Iowa, 1, 148 N. W. 1035. In the principal case no one had any standing to object if the trustee conveyed to herself. *Partridge* v. *Clary*, 228 Mass. 290, 117 N. E. 332. See A. W. Scott, "Control of Property by the Dead," 65 UNIV. OF PA. L. REV. 649–650. The sole reason for keeping the trust alive would be to give effect to the testator's ill-expressed intent that the enjoyment of the corpus of the trust be postponed. In England and in some of our jurisdictions a postponement of the enjoyment of the interest of a sole *cestui que trust* would be invalid aside from the question of merger. *Saunders* v. *Vautier*, 4 Beav. 66; *Magrath* v. *Morehead*, L. R. 12 Eq. 491; *Huber* v. *Donoghue*, 49 N. J. Eq. 125, 23 Atl. 495. *Contra*, *Claflin* v. *Claflin*, 149 Mass. 18, 20 N. E. 454. And, even in the jurisdiction which enunciated the doctrine of *Claflin* v. *Claflin*, such limitation will be disregarded if circumstances make postponement of enjoyment inexpedient. *Sears* v. *Choate*, 146 Mass. 395, 15 N. E. 786. The Massachusetts court has recently approved the language in *Sears* v. *Choate* and has expressed itself in accord with the principal case on similar facts. See *Langley* v. *Conlan*, 212 Mass. 135, 138, 98 N. E. 1064, 1066.

VOLUNTARY ASSOCIATIONS — ACTIONS AGAINST. — The plaintiff was expelled from membership in an unincorporated association, upon a vote of the members of the association, because of an alleged violation of a regulation of the society. He brought an action for damages against the society in its collective name without service on the individual members, and recovered judgment. *Held*, that judgment be reversed for want of jurisdiction. *Simpson* v. *Grand International Brotherhood of Locomotive Engineers*, 98 S. E. 580 (W. Va.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 298.

WATERS AND WATERCOURSES — PROFITS À PRENDRE — RIGHT TO TAKE FISH ON A NON-NAVIGABLE, NON-TIDAL STREAM. — The defendant was alleged to have converted mussels by taking them from the bed of a non-navigable, non-tidal river at a place where the plaintiff was owner of both banks of the stream. A statute declared that title to all game and fish was vested in the state (1909 MO. REV. STAT., c. 49, § 6508). *Held*, that the plaintiff could not recover. *Gratz* v. *McKee*, 258 Fed. 335 (Circ. Ct. App., 8th Circ.).

Title to the beds of all navigable streams is vested in the sovereign in trust for the public. *Forestier* v. *Johnson*, 164 Cal. 24, 127 Pac. 156. See *Commonwealth* v. *Alger*, 7 Cush. (Mass.) 53, 90. *Contra*, *Willow River Club* v. *Wade*, 100 Wis. 86, 76 N. W. 273. By the English and early American common law the existence of a tidal ebb and flow determined navigability. *Adams* v. *Pease*, 2 Conn. 481; *Hooker* v. *Cummings*, 20 Johns. (N. Y.) 90. Geographical conditions have altered the test in many jurisdictions to navigability in fact. *The Daniel Ball*, 10 Wall. (U. S.) 557. See *Kinkead* v. *Turgeon*, 74 Neb. 573, 584, 109 N. W. 744, 746. But some jurisdictions have retained the earlier rule. *Lattig* v. *Scott*, 17 Idaho, 506, 107 Pac. 47; *Washington Ice Co.* v. *Shortall*, 101 Ill. 46. When the bed of a stream is owned by the sovereign, the right of fishing is public. *In re Provincial Fisheries*, 26 Can. Sup. Ct. 444. See *Dunham* v. *Lamphere*, 3 Gray (Mass.), 268, 271. By the great weight of authority the owner of both banks of a non-navigable river, who is thereby owner of the subaqueous soil, acquires the exclusive right of fishing. *Beach* v. *Morgan*, 67 N. H. 529; *Queen* v. *Robertson*, 6 Can. Sup. Ct. 52. But some courts hold that the right of fishing is incident to the general easement of passage over public waters. See *Hartman* v. *Tresise*, 36 Colo. 146, 162, 84 Pac. 685, 690. The right to fish upon the land of another is a profit *à prendre* and is incapable of creation except by grant or prescription. *Fitzgerald* v. *Firbank*, [1897] 2 Ch. 96. See *Cobb* v. *Davenport*, 33 N. J. L. 223, 225. An action will lie for violation thereof.